Supreme Court, U.S.
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NO. 93-765

in the Supreme Court of the United States

October Term, 1993

BELIZE TRADING, LTD. and HYBUR LTD.
Petitioners,

v.

EL PIRATA DEL CARIBE, S.A. and VIANESSA, INC. and TRIPOLI IMPORTADORA, C.A. f/u/b/o INSURANCE COMPANY OF NORTH AMERICA,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the United States Court of Appeals for the Eleventh Circuit failed to properly apply Section 1303(3) of the Carriage of Goods by Sea Act, 46 U.S.C. §1303(3), by ruling that such section mandates a carrier to show on an ocean bill of lading the number of packages in each container as furnished in writing by the shipper.

2. Whether the United States Court of Appeals for the Eleventh Circuit's ruling that, under the specific facts of this case, the ocean bills of lading were not effective conflicts with established maritime precedents.

LIST OF PARTIES

Petitioner, Belize Trading (Belize), is a foreign company which, at all times material, was the owner of the M/V "HYBUR TRADER."

Petitioner, Hybur Ltd., operated the M/V "HYBUR TRADER", and was a common carrier by water for hire.

Hyde Shipping Corporation (Hyde), a Miami based corporation, provided agency services to the M/V "HYBUR TRADER".

Respondent, El Pirata Del Caribe, S.A. (El Pirata), was the consignee and owner of certain goods to be shipped on the M/V "HYBUR TRADER".

Precision Trading Corporation (Precision), was the shipper of El Pirata's goods.

Respondent, Vianessa, Inc. (Vianessa), was the shipper of the goods of Respondent, Tripoli Importadora, S.A. (Tripoli).

Insurance Company of North America was the insurer of Vianessa's cargo and paid the loss.

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STATEMENT OF THE CASE

Facts

Other than the fact that the vessel encountered inclement weather and a number of cargo containers were lost, including one container belonging to Claimant, Vianessa, and two containers belonging to Claimant, El Pirata (App. C-2) there is no evidence in the record to support the last two paragraphs of Petitioner's "Factual History". In fact, much of the last two paragraphs of Petitioner's "Factual History" are simply untrue.

In addition to the other facts stated by the Petitioner, Respondents would add the following:

Hyde received Precision's three packing lists showing the number of packages in each container prior to the preparation of the bill of lading.

Hyde received invoices from Vianessa showing the number of packages in each container prior to the preparation of the bills of lading.

It was the normal and usual practice of Hyde to prepare bills of lading and Shipper's Export Declarations from the information received from the shipper (invoices, packing lists, etc.). If the documents received did not indicate the number of packages in each container Hyde would call the shipper for the information. Hyde's normal and usual practice was to show on the bills of lading the number of packages in each container.

Prior to the preparation of the bills of lading Hyde had knowledge of the number of packages in each container.

Prior to the preparation of the bills of lading, Hyde issued dock receipts to Vianessa that indicated the specific number of cartons in the sealed container. (App. C-3)

Hyde did not prepare the bills of lading in its normal and usual manner, which fact was unknown to the shippers and consignees until after the loss of the cargo.

Summary of Argument

The shippers furnished in writing to the carrier the number of packages in each container and their weight. The Carriage of Goods By Sea Act, 46 U.S.C. §1303(3), requires the carrier to show on the bill of lading the information furnished by the shipper. Without cause or reason Hyde failed to comply with the requirements of the Act.

Petitioner's form bill of lading required acceptance by the parties. Hyde failed to prepare the bill of lading in the normal and usual manner by failing to show on the bills of lading the number of packages in each container, a fact unknown to the shippers/consignees until after the lost. Under these facts the Eleventh Circuit was correct in holding that there was no agreement between the parties.

There is no conflict with established maritime law and the petition should be denied.

ARGUMENT

I

THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT PROPERLY APPLIED SECTION 1303(3) OF THE CARRIAGE OF GOODS BY SEA ACT 46 U.S.C. §1300.

Section 1303(3) of The Carriage of Goods By Sea Act clearly requires the carrier to issue a bill of lading showing either the number of packages or the quantity or weight as furnished by the shipper. 46 U.S.C. §1303(3). Respondents provided, in writing, the carrier the number of packages in

each container. There was no evidence that the carrier had "reasonable grounds for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking".

The cases relied upon by the Petitioner deal with the doctrine of estoppel when there was detrimental reliance on the description that appeared in the bill of lading by a holder in due course. In *Portland Fish Co. v. States Steamship Co.*, 510 F.2d 628 (9th Cir. 1974), the court clearly stated:

> "Thus the doctrine is not applicable in a suit by a shipper against a carrier,[12] or where reliance on the description by a holder for value is not reasonable,[13] or where the holder does not rely on the description at all.[14]" *Id.* at 633, footnotes omitted.

The case at bar is a suit by shippers/consignees against a carrier and not one by a holder in due course in reliance on the description in the bills of lading and, therefore, the cases cited by the Petitioner are not applicable. The requirement of COGSA does not create an undue burden on the carrier in its dealings with shippers concerning the description in the bill of lading. The Eleventh Circuit's holding does not render Section 1303(3) of COGSA null and void and was correct in finding that Hyde "failed to adhere to the law".

II

THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT'S RULING THAT THE BILL OF LADING WAS NOT EFFECTIVE UNTIL ACCEPTED BY THE SHIPPER OR CONSIGNEE WAS CORRECT AND DOES NOT CONFLICT WITH ESTABLISHED MARITIME PRECEDENT.

The holding that the bills of lading were not contracts is fully supported by the specific facts of this case and the applicable law.

The Eleventh Circuit's ruling is based on the express language of Petitioner's bill of lading which required acceptance by the shipper, consignee and owner. (App. A-7).

Additionally, the cases relied upon by the Petitioner do not support its contentions that the ruling conflicts with established maritime law. In *Luckenbach S.S. Co., Inc., v. American Mills Co.*,24 F.2d 704 (5th Cir. 1928) the court held that:

> "... [A]n implied understanding arose from common business experience that the carrier would issue such bill of lading as it was its custom to issue to shippers in the usual course of its business" *Id.* at 705.

Also, the Petitioner fails to understand the difference between preparation of the bills of lading and issuance of the bills. The record clearly establishes that the bills of lading were prepared on or about October 8, 1987, but were not received by the shippers/consignees until after the loss.

In this case, had Hyde followed its normal, usual and customary practice of showing the number of packages in each

container as furnished by the shippers and had adhered to the requirements of Section 1303(3) of COGSA there would be no dispute.

CONCLUSION

Belize is attempting to profit from their failure to follow their own course of business and their failure to adhere to the applicable law. There is no conflict with established maritime law or misapplication of the requirements of COGSA. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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December 2nd, 1993